IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Agarwal Salt Company vs. Additional Commissioner (VAT & I.T.), Commercial Taxes,Jaipur.

(S.B.C.Writ Petition No.7725/07)

Dated :- 29.11.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr. Suresh Ojha, for the petitioner.
Mr. Vinit Mathur, for the respondents.

The learned counsel Mr. Vinit Mathur accept notices on behalf of the respondents . With the consent of the learned counsel for the parties, the writ petition is being finally heard and disposed of.

The petitioner industrial unit was granted the benefit of exemption from payment of tax on the sales made within the State and in course of inter state trade or commerce of the goods manufactured by it within the State, under the Sales Tax Incentive Scheme, 1987 (in short "the Incentive Scheme,1987" hereinafter) notified by the State Government vide notification dated 23.5.1987 in exercise of powers conferred u/s 4(2) of the Rajasthan Sales Tax Act, 1954 and Section 8(5) of the Central Sales Tax Act , 1956.

As per Clause 4(e)(i) of the Incentive Scheme, 1987 the

benefit of exemption extended to the petitioner industrial unit were subject to the condition that after having availed the benefit of exemption, it shall continue its production at least for next five years, not below the level of average production of the preceding five years. Admittedly, the petitioner industrial unit could not maintain the average production in terms of clause 4 (e)(i) of the Incentive Scheme, 1987.

Thus, in view of breach of conditions contained in clause 4 (e)(i), the proceedings under clause 9(b) of the Incentive Scheme, 1987 have been initiated against the petitioner.The learned Additional Commissioner(VAT & I.T.),Commercial Taxes, Jaipur, vide communication dated 15.9.07(Annex.2) while proposing to withdraw the benefits extended with retrospective effect has sought opinion of the District Level Screening Committee, Bikaner in terms of clause 9(b) of the Incentive Scheme,1987. The District Level Screening Committee in its turn vide impugned notice dated 15.10.07 has directed the petitioner to submit his objections, if any, within a period of 7 days.

Admittedly, the Incentive Scheme, 1987 has already been amended vide Notification dated 11.04.2007 issued by the Government of Rajasthan whereby the existing condition(i) of sub-clause (e) of Clause 4 has been deleted w.e.f. 23.5.1987. However, it has been further provided that if a manufacturer

deposited any amount, which is payable by him due to breach of condition(i) of clause(e) deleted vide notification dated 11.4.2007 shall not be refunded.

In view of the subsequent amendment in the Scheme as aforesaid, the very foundation of the recovery proceedings initiated against the petitioner vide communication dated 15.9.07 issued by the Additional Commissioner(VAT & IT), Commercial Taxes, Jaipur,for alleged breach of condition does not survive. The impugned communication/notice issued by the Additional Commissioner(VAT & IT) and District Level Screening Committee ignoring the said amendment are not sustainable in the eye of law.

In the result, the writ petition succeeds, it is hereby allowed. The proceeding initiated against the petitioner on the basis of alleged breach of conditions incorporated in clause 4(e)(i) of the Incentive Scheme, 1987 is quashed. No order as to costs.

(SANGEET LODHA),J.